

HON'BLE SRI JUSTICE R.KANTHA RAO

Civil Revision Petition No.2454 of 2015

Order:

Heard Sri T.V. Jaggi Reddy, learned counsel appearing for the petitioner and the learned counsel appearing for the 1st respondent.

2. The petitioner is the 4th defendant in the suit.

The 1st respondent-plaintiff filed the suit for declaration of title and recovery of possession against the petitioner and others. The petitioner and the other defendants in the suit are closely related to each other. In the suit, summons were issued to the petitioner and they were served on him. He did not appear before the Court and thereupon the Court passed an order dated 10-6-2013 setting him

ex parte. The petitioner filed an application under Order XI, Rule 7 C.P.C on 26-12-2014. The petition was opposed by the plaintiff contending that the other petitioners are his close relatives, the contention of all the defendants in the suit is one and the same and also that the petitioner did not show any sufficient cause for inordinate delay in making an application to set aside the *ex parte* order. Obviously, the trial in the suit commenced and the petition under

Order IX, Rule 7 C.P.C was filed by the petitioner at the stage when the case was posted for cross-examination of P.W.1. The learned Court below accepted the contention put forth by the 1st respondent-plaintiff and dismissed the

application filed by the petitioner-4th defendant under Order IX, Rule 7 C.P.C.

3. The petitioner filed his written statement along with the application filed under Order IX, Rule 7 C.P.C and stated therein that he intends to contest the matter.

Even though there are laches on the part of the petitioner, he approached the Court for setting aside the *ex parte* order. This Court is of the view that the learned Trial Court could have afforded him an opportunity to contest the suit without dismissing his application filed under Order IX, Rule 7 C.P.C.

4. However, having regard to the facts and circumstances of the case afore-referred, I am of the view that the petition can be allowed on imposing some costs. Consequently, the order dated 08-4-2015 in I.A.No.1069 of 2014 in O.S.No.89 of 2012 passed by the learned I Additional Junior Civil Judge, Kakinada, is set aside and the said application is allowed, subject to payment of costs of Rs.1,000/- (Rupees one thousand only) payable in one month to the plaintiff from the date of receipt of a copy of this order. The Trial Court is directed to receive the written statement of the petitioner and proceed in accordance with law. The civil revision petition is allowed accordingly. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

R.KANTHA RAO, J.

21st August, 2015.

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